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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2145

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/766,841	Applicant(s) PAPADIMITRIOU ET AL.	
	Examiner Jeffrey R. Swearingen	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/2/2008 have been fully considered but they are not persuasive.
2. Applicant argued McCanne failed to disclose *receiving one or more diversity parameters defining one or more diversities between said connections and a further connection via a second serving edge node of said serving network, wherein said first serving edge node and said second serving edge node are different serving edge nodes*. As best understood, Applicant is exchanging the IP addresses and configuration parameters of the two endpoints of the connection. The two endpoints are diversities, since they are not the same endpoint. Applicant's limited amendments to correct the 112 deficiencies and limited explanation of both the invention and the McCanne reference have not assisted in explaining the invention in a manner that can interpret this in another manner.
3. Applicant did not respond to the double patenting rejection, deeming it not ripe.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by McCanne (US 6,611,872).
6. In regard to claim 1, McCanne disclosed a *method for establishing a connection via a first serving edge node of a serving network, (use of end routers and overlay routers on the edge of a network, column 8, lines 50-64) said method comprising: receiving one or more diversity parameters defining one or more diversities between said connection and a further connection via a second serving edge node of said serving network, (exchange of connection parameters, column 11, line 51 - column 12, line 4)*

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wherein said first serving edge node and said second serving edge node are different serving edge nodes (column 11, lines 53-56), and exchanging information between said serving edge nodes and of, in response to exchanged information, setting up at least a part of said connection. (column 11, line 51 – column 12, line 4)

7. In regard to claim 2, McCanne disclosed *said first serving edge node is coupled via a first client edge node to a client source node in a client network, and said second serving edge node is coupled via a second client edge node to said client source node in said client network, said first client edge node and said second client edge node being different client edge nodes situated in said client network. Figure 4A.*

8. In regard to claim 3, McCanne disclosed *said exchanged information comprises a request flowing from said first serving edge node to said second serving edge node, at least a part of each connection being defined by one or more connection parameters. (Column 11, line 51 - column 12, line 4)*

9. In regard to claim 4, McCanne disclosed *said exchanged information comprises one or more further connection parameters defining at least a part of said further connection and flowing from said second serving edge node to said first serving edge node, said first serving edge node calculating at least a part of said connection. (column 11, line 51 - column 12, line 4; column 12, lines 19-35)*

10. In regard to claim 5, McCanne disclosed *said exchanged information comprises one or more connection parameters defining at least a part of said connection and flowing from said first serving edge node to said second serving edge node, said second serving edge node calculating at least a part of said connection. (column 11, line 51 - column 12, line 4; column 12, lines 19-35)*

11. In regard to claim 6, McCanne disclosed *a connection parameter comprises at least one of a connection identification, a connection node, a connection link, a connection resource, a connection source and a connection destination, and wherein a diversity parameter comprises at least one of a link diversity, a node diversity, a resource diversity, a shared risk diversity, a link non-diversity, a node non-diversity, a resource non-diversity and a shared risk non-diversity. (column 11, line 66 - column 12, line 4)*

12. In regard to claims 7-10, McCanne disclosed *a serving edge node and interface for use in a serving edge node and a client edge node and interface for use in a client edge node for performing a*

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method for establishing a connection via a first serving edge node of a serving network, (use of end routers and overlay routers on the edge of a network, column 8, lines 50-64) which method comprises a step of receiving one or more diversity parameters defining one or more diversities between said connection and a further connection via a second serving edge node of said serving network, (exchange of connection parameters, column 11, line 51 - column 12, line 4) wherein said first serving edge node and said second serving edge node are different serving edge nodes, (column 11, lines 53-56) and exchanging information between said serving edge nodes and of, in response to exchanged information, setting up at least a part of said connection, (column 11, line 51 – column 12, line 4) said serving edge node comprising a request-transceiver for transceiving a request to/from another serving edge node; a connection-parameter-transceiver for transceiving connection parameters to/from another serving edge node; a calculator for calculating at least a part of said connection. (column 11, line 51 - column 12, line 4; column 12, lines 19-35)

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1 and 7-10 are provisionally rejected on the ground of nonstatutory double patenting over claims 1 and 7-8 of copending Application No. 11166212. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the

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referenced copending application and the instant application are claiming common subject matter, as follows: The claims of the instant application are directed toward a *method (claim 1) for establishing a connection via a first serving edge node of a serving network, which method comprises a step of receiving one or more diversity parameters defining one or more diversities between said connection and a further connection via a second serving edge node of said serving network, characterised in that said first serving edge node and said second serving edge node are different serving edge nodes which method comprises the steps of exchanging information between said serving edge nodes and of, in response to exchanged information, setting up at least a part of said connection.* The co-pending application is toward a *network (claim 1) for setting up a connection from a first node to a second node through transmitting a request message from the first node to the second node and transmitting an allocation message (diversity parameter) from the second node to the first node, characterised in that the request message comprises an indication for indicating the first node's capabilities with respect to a first signaling procedure (exchanging information and diversity parameters) and with respect to a second signaling procedure, the allocation message comprising an instruction for instructing the first node to use one of the signaling procedures for the setting up of the connection.* The co-pending application is to establishing a connection between nodes, whereas the instant application is toward establishing a connection between edge nodes.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
16. Kenner et al. US 6,112,239
17. Sharma US 6,744,774
18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen
Examiner
Art Unit 2145

/J. R. S./
Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145